

THE PHILIPPINE CORK & INSULATION CO., PLAINTIFF AND APPELLEE, VS. ISIDORO DE SANTOS, DEFENDANT AND APPELLANT.*G.R. No. 44832. December 03, 1938*

Ponente: DIAZ, J.

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Plaintiff obtained judgment in civil case No. 40772 of the Court of First Instance of Manila against defendant Isidoro de Santos in the amount of P10,244.29. Said judgment having become final, plaintiff secured a writ of execution and of garnishment of the funds which John Gordon, who had been appointed receiver of defendant's properties in civil case No. 41033 entitled "El Hogar Filipino, plaintiff, vs. Isidoro de Santos, The Bank of the Philippine Islands and John Gordon, defendants", held at defendant's disposal as allowance for support given the latter by his creditors in said case. Notwithstanding defendant's objections, the lower court sustained the writ of garnishment and denied the motion filed to have it lifted. The order of the lower court to this effect was dated October 10, 1935 and numbered 22. From said order, defendant appealed and now contends in his brief that the lower court committed the following errors:

"1. The court a quo erred in holding in said order that the amount of one thousand pesos (P1,000) which the creditors El Hogar Filipino, the Bank of the Philippine Islands and John Gordon give monthly to the debtor Isidoro de Santos and his family by virtue of the agreement entered into between the parties in civil case No. 41033, is not entitled to the consideration of an allowance for support provided for by law.

"2. The court a quo erred in not holding null and void in said order the garnishment effected by the sheriff of Manila on the amounts in the hands of the receiver as allowance for support of defendant and his family by virtue of the aforesaid agreement which has been furthermore approved by final and executory judgments.

"3. The court a quo erred in not lifting the garnishment effected by the sheriff of Manila on the sums to which defendant and his family are entitled for their support;

"4. The court a quo erred in issuing the order dated October 22, 1935 in this case."

The whole question raised in the four errors assigned by appellant may be reduced to a determination of whether or not the amount of P1,000 which appellant received monthly from the receiver John Gordon, who was appointed as such in civil case No. 41033, is subject to garnishment and execution by virtue of the judgment of the lower court to satisfy the judgment credit of the plaintiff corporation in the sum of P10,244.29.

Appellant contends that the aforesaid amount is not so liable for the reason that it is an allowance for support of which he can not be deprived inasmuch as his right to receive it monthly has been recognized in the case aforesaid. This same question has already been determined by this court in case G. R. No. 44427 entitled "Oscar E. Guerrero, plaintiff and appellee, vs. Isidoro de Santos, defendant and appellant", decided on March 31, 1938 (38 Off. Gaz., 1928). We held therein that:

"Although it appears from the agreement between Dr. Isidoro de Santos and his creditors that this monthly allowance of P1,000 is for his support, in reality, it is not. Said allowance being part of the rents derived from

the properties of Dr. Isidoro de Santos, it belongs to him and he receives it, not as given by his creditors, but as coming from his own property. In reality, the agreement from which this allowance originated means nothing more than that the creditors have consented to set aside a portion of the rents of the properties of Dr. Isidoro de Santos before they are applied to pay his obligations. On the other hand, this so-called allowance is not justified since it does not appear that Dr. De Santos needs it for his support notwithstanding he is a practicing physician and has a clinic in Manila.

"At any rate, even if it were an allowance for support, it is not exempt from execution, according to section 452 of the Code of Civil Procedure, since it is not included among the properties enumerated in this section. The appellant invokes article 151 of the Civil Code, which provides that the right to support cannot be set off against any indebtedness of the recipient in favor of the person required to furnish such support. But the prohibition contained in this article does not preclude the execution of the allowance, as it is not included among the properties exempted by law. (Decisions of the Supreme Court of Spain dated July 7, 1902 and February 27, 1903.) Act No. 3862, which exempts from execution all moneys, benefits, privileges or annuities accruing or in any manner growing out of any life insurance, is neither applicable to the allowance in question as it does not originate from life insurance. The condition requiring that an allowance, in order to be exempted, must come from life insurance, excludes all other allowances coming from other sources."

There exists no reason for altering our conclusion. The reasons which appellant then alleged are the same ones adduced by him in this case. The allowance for support which he insists in claiming is the same as that passed upon in the case above-mentioned. The present appeal must, therefore, be disposed of in the same manner as his appeal in that case.

Wherefore, the judgment appealed from is hereby affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

Villa-Real, J.; I dissent from the opinion of the majority for the same reasons given in my dissenting opinion in G. R. No. 44427 to which the majority refer.

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